

UNITED STATES CIVIL SERVICE COMMISSION
Office of the Executive Director
Interagency Advisory Group
1900 E Street, N.W.
Washington, D.C. 20415

Minutes of the IAG Committee on
Adverse Action and Appeals
January 16, 1976

Mr. Reginald Jones, Chief of Special Policies Division, Bureau of Policies and Standards, chaired the meeting, assisted by Wilma Lehman and Jeanette Loudon.

Legislative matters

Mrs. Lehman and Mr. Jones reported on H.R. 6227, the Daniels bill, which has been referred to the Senate for its consideration. The bill has not yet been taken up in committee action, but the Commission did report on the bill to the Senate; with OMB's approval, the Commission's report stated that enactment of the bill would be contrary to the program of the President. The Commission's legislative proposal is still in the clearance process within the Commission; barring any further changes it should go to the Commissioners for their approval in the near future. Nothing substantive in this package has been changed since the Committee saw it last.

Changes in 771 and 772 re choice of representative in appeals and grievances

Ms. Loudon said that several changes are presently being made in the regulations based on the comments received, particularly with regard to the use of the terms "disallow" and "challenge", and actions to be taken by FEAA when requested witnesses are not made available. Copies of the new draft will be given to the group at the next meeting. Within two weeks the policy subcommittee will be convened to discuss the draft and bring their comments to the full Committee.

Comptroller General's decision (B-183086, December 5, 1975) on corrective actions requiring retroactive temporary promotions for extended details to higher grades

This decision resulted from a 1974 BAR decision that two employees, detailed to higher grade positions for over 120 days without prior approval of the Commission were entitled to retroactive temporary promotions. The employees had claimed they were reduced in rank at the end of the details when they were returned to their officially

assigned positions. The Board found no reduction in rank, but decided there had been an unwarranted personnel action which entitled the employees to temporary promotions for the periods beyond 120 days of their details. The Comptroller General, overruling an earlier C.G. decision, granted the employees' request for back pay, though it sent a question to the Board for a determination as to whether the Whitten Amendment should be waived in the case of one of the employees not meeting these requirements.

A committee member asked about the type of guidance the Commission will be providing on this subject. Tom O'Connor of the Commission's Bureau of Recruiting and Examining told the Committee that several offices within CSC have an interest in this decision, including BRE which has policy responsibility for details and merit promotion. He noted the decision underscored the need for agencies to carefully consider the Commission's longstanding requirements and restrictions on details published in the basic FPM. Details must be documented beyond 30 days; made under competitive promotion procedures if the detail to a higher graded position will last more than 60 days; and confined to a maximum period of 120 days, unless prior Commission approval is obtained. The decision provides an excellent opportunity for agencies to remind their line managers of the proper procedures for detailing employees. Prevention of the kind of situation disclosed in this case is the best answer to such problems.

Because the decision raises some questions of possible conflict with other requirements -- merit promotion, qualification standards, and time-in-grade restriction -- the Commission will be studying these issues to determine whether other actions may be necessary.

It was stated that the problem of excessively long details was one of many items requiring more attention by agencies, IAG committees, and the Commission, where management had violated management regulations, and then had put the burden of its violation on the employee.

A member noted a recent court decision (Peters v. United States, No. 470-73 (Ct. Cl. December 17, 1975)) which seemed to go in the opposite direction from the C. G. decision. However, in this case, the appellant had not exhausted his administrative remedies before his retirement from the Federal service. Further, the Court was apparently unaware of the very recent C. G. decision. Mr. Jones pointed out that these decisions show the need for a continuing mutual exchange of information.

Relationship of agency handling of reports of unsafe or unhealthful working conditions to agency grievance procedures

A committee member noted that the Department of Labor has included in its regulations on safety and health the provision that "Nothing in this section is intended to interfere in any way with the prior,

simultaneous or subsequent use of any employee of the grievance procedures established pursuant to Executive Order No. 11491, as amended, Executive Order 11636, collective bargaining agreement, or 5 CFR Part 771 (or military equivalent) as a means of requesting correction of alleged unsafe or unhealthful working conditions." He believes that this statement creates obvious impracticalities when the employee may file an informal complaint and hazard report at the same time and on the same subject, resulting in two different decisions by the agency head and DoL. It was pointed out that the report under DoL regulations is not a complaint and that the final decision on disposition of the report is that of the agency head.

Patrick Zembower of the CSC's Office of Labor Management Relations, who had worked with DoL drafting the present regulations, pointed out that under the Occupational Safety and Health Act of 1970, it was necessary to establish a system consistent with that already provided for employees in the private sector. However, under the law, Congress did not give the Secretary of Labor the same authority in the Federal safety and health program, i.e., to inspect workplaces and issue citations; instead the agency head has the final authority for correcting safety and health problems. The language in Part 1960 was drafted with the advice and assistance of union and management representatives serving on the Federal Advisory Council on Safety and Health. The language was carefully drawn. The objective was to permit employees to use already available procedures to report hazards, not to mandate another procedure while recognizing that nothing could limit the employee's right to report directly to OSHA. The challenge to management is to operate the best S&H program possible, to deal promptly with hazards, to permit employees to raise issues of concern and in all of this not to permit the various avenues of relief to collide.

Mr. Broderick, of DoL's Office of Federal Agency Safety Programs, said that the intent of the DoL regulations was to solve routine safety hazard problems at the lowest possible level through DoL reporting procedures. The agencies' own internal regulations would cover their reporting procedures. The DoL has never had to go into agencies and inspect since the regulations were issued; it cannot unless the agency head concurs. The DoL regulation does not give DoL the authority to set aside the agency grievance system.

It was agreed that dual systems probably can create problems in the safety and health area, although practically none have arisen to date. Mr. Broderick felt that the issue should be kept separate at the lower levels and that the use of administrative grievance procedures should not be ruled out. There was a discussion of the possibility of holding a grievance in abeyance if there was a safety health question until the question had been resolved satisfactorily under DoL reporting procedures. Mr. Jones concluded that this situation was one which the policy subcommittee should study.

The next meeting of the Committee will be held on February 20, 1976.